IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Bail Appl..No. 3873 of 2007()

C.C. NO. 1588/2002 of CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM
CRIME NO. 2/2002 of CENTRAL POLICE STATION, ERNAKULAM

PETITIONER:

SREEJITH S/O. NANU, AGED 25 YEARS,
MOOLATHARA HOUSE,
KARSHAKA ROAD, KOCHI - 16.

BY ADV. SRI.R.DIVAKARAN

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
S.I. OF POLICE, CENTRAL POLICE STATION,
ERNAKULAM REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. JAI GEORGE, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 3873 Of 2007

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Dated this the 20th day of June, 2007

ORDER

Petitioner faces allegations in a prosecution for offences punishable, interlia, under section 458 read with 34 IPC. The trial is over. The matter has been posted for hearing. At that stage, on one day of posting, the petitioner could not appear. Consequently a warrant of arrest has been issued by the learned Magistrate. The petitioner prays that directions under Section 438 may be issued in his favour. His absence was not intentional and was on account of reasons beyond his control, it is submitted. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C and/or 482 Cr.P.C, prays the learned counsel for the petitioner.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE